



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 183 OF 2012

JOHN NJENGA NJAU.....PLAINTIFF

VERSUS

PETER NJOROGE NJAU.....DEFENDANT

JUDGMENT

This suit was commenced by way of a Plaint dated 26th March 2012 and filed on 5th April 2012 in which the Plaintiff sought for judgment to be entered against the Defendant as follows:

- i. A permanent injunction restraining the Defendant from alienating, selling, disposing, leasing, farming, building and or dealing with the parcel of land known as Limuru/Kamirithu/2883 (hereinafter referred to as the “suit property”).
- ii. A declaration that the suit property belongs to the Plaintiff and that the registration of the same in favour of the Defendant was fraudulent, unprocedural and or unlawful.
- iii. A mandatory order requiring the Defendant to execute the requisite transfer forms and surrender the original title and any other relevant documents to the Plaintiff to facilitate the transfer of the suit property in favour of the Plaintiff and in lieu of such surrender the Deputy Registrar be mandated to execute such transfer forms and or any other documents as may be necessary to facilitate the transfer of the suit property into the Plaintiff’s favour.
- iv. A declaration that the Plaintiff is entitled to the Kshs. 218,000/- in respect of the acquisition of a portion of the suit property acquired in the year 2010-2011 by the Kenya Government in respect of the construction of the THOGOTO-GIKAMBURA-MUTARAKWA road.

Pleadings

In the Plaint, the Plaintiff, John Njenga Njau, stated that both he and the Defendant, Peter Njoroge Njau, are brothers and sons of their late father, Njau Gakuru. He stated further that their late father was the registered owner of the parcel of land known as Limuru/Kamirithu/142. He stated that this parcel of land was transferred to their eldest brother, Samuel Kahara Njau in 1967, to hold it for his benefit and the benefit of his other brothers, including the Plaintiff. He stated that thereafter, the said Samuel Kahara refused to share out that parcel of land to his brothers leading to their instituting civil proceedings before

- ii. Peter Njoroge Njau(himself) 0.75 acres
- iii. Mwaura Njau 0.75 acres
- iv. Njenga Njau (Plaintiff) 0.75 acres

It was her testimony that the Defendant sold his portion of land and therefore the suit property rightfully belongs to the Plaintiff.

The Defence also called two witnesses being Mwaura Njau (DW1) and the Defendant (DW2). DW1 confirmed that the Plaintiff is his step-brother. He informed the court that they were 4 brothers, sons of the late Njau Gakuru, the initial registered proprietor of the parcel of land known as Limuru/Kamirithu/142. It was his testimony that this parcel of land was the subject of a long court dispute which was finally resolved by the Court of Appeal which confirmed the award of the Kiambu Resident Magistrate's court which ordered the parcel of land to be subdivided into two portions, one measuring 1.45 acres being Limuru/Kamirithu/1668, which was registered in the name of Samuel Kahara and the remaining portion being Limuru/Kamirithu/1667, which was registered in the joint names of the Plaintiff, himself and the Defendant. It was his further testimony that they further subdivided their portion being Limuru/Kamirithu/1667 into four portions, all of which they subsequently sold and shared the sale proceeds thereof. He confirmed having received his share being Kshs. 300,000/- and also informed the court that the Plaintiff also received Kshs. 300,000/- being his share of the sale proceeds. It was his testimony that the Plaintiff had no valid claim of the suit property.

On his part, the Defendant (DW2) confirmed the testimony of DW1 by confirming the agreement amongst him, the Plaintiff and DW1 to subdivide the portion allocated to them by the court and registered in their joint names being Limuru/Kamirithu/1667 into four portions that is parcel number 2880, 2881, 2882 and the suit property. It was his testimony that they agreed to sell off all four portions as follows: 2880 to one Mr. Paul Boro Karinge, 2881 to George Boro Njunge, 2882 to Paul Boro Karinge and 2883 being the suit property to Mr. Peter Mbugua Kariuki. He testified that all three of them, including the Plaintiff, attended the Land Control Board to obtain the consent to transfer those parcels to the named buyers. He confirmed that the Plaintiff was given Kshs. 300,000/- being his share of the sale proceeds. It was his further testimony that as they were left with no other land belonging to their late father, he decided to re-purchase the suit property from Mr. Peter Mbugua Kariuki and obtained a title deed in his name.

Issues and Determination

The main issue arising for determination in this suit is who, as between the Plaintiff and the Defendant, is the duly registered proprietor of the suit property. Both the Plaintiff and the Defendant are in agreement that the suit property is a subdivision of a larger parcel of land known as Limuru/Kamirithu/1667 which was registered jointly in the names of three brothers, namely the Plaintiff, the Defendant and Mwaura Njau. It is also common ground that each of the three brothers were entitled to 0.75 acres each of that portion of land. It is also common ground that these three brothers agreed to further subdivide 1667 into four portions which yielded parcel number 2880, 2881, 2882 and the suit property. The point of departure between the Plaintiff and the Defendant is in regard to the suit property. The Plaintiff claims that he was entitled to receive the suit property and did not agree to its sale. However, the Defendant's position is that the three of them, including the Plaintiff agreed to sell the four portions being parcel number 2880, 2881, 2882 and the suit property to the buyers named above and that each of them received his share of the sale proceeds. The Defendant's position is that the Plaintiff willingly attended the Land Control Board meeting which approved the sale and received Kshs. 300,000/- being his share of the sale proceeds. The Defendant's case is that he subsequently purchased back the suit property from Mr. Peter Mbugua Kariuki and thus the suit property belongs to him and not to the Plaintiff. As evidence of this assertion, DW2 produced a copy of the green card of the suit property which indeed shows that the suit property, which was a partition of no.1667, was owned by Peter Mbugua Kariuki and a title deed was issued to him on 24th January 2007 and that subsequently on 3rd April 2007, the Defendant (DW2) was registered as the proprietor of the suit property and a title deed was issued to him on the same day. Further to that, the

Defendant produced a copy of the mutation form for Limuru/Kamirithu/1667 dated 4th January 2007 which bears the Plaintiff's thumb print and the signatures of the three named buyers of the four portions which goes to show that the Plaintiff consented to the subdivision and the sale of the portions to the buyers. Notably, the purchaser of the suit property Mr. Peter Mbugua Kariuki's name and signature is evident on this form.

After considering the evidence brought before this court by both the Plaintiff and the Defendant, I am sufficiently convinced that the suit property belongs to the Defendant and that the Plaintiff has no claim whatsoever to it. The Plaintiff was clearly involved in the subdivision of parcel Limuru/Kamirithu/1667 into four portions and received his due recompense for his share amounting to Kshs. 300,000/-. The suit property was indeed repurchased by the Defendant using his own means and is the duly registered proprietor thereof.

The upshot of this is that this suit is hereby dismissed with no order as to costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF SEPTEMBER 2017.

MARY M. GITUMBI

JUDGE